

Occupational Safety and Health

The Occupational Safety and Health Act of 1970 (OSH Act) (29 USC §651 *et seq.*; 29 CFR Parts 1900 to end)

Who is Covered

In general, the Occupational Safety and Health Act (OSH Act) covers all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and other U.S. territories. Coverage is provided either directly by the federal Occupational Safety and Health Administration (OSHA) or by an OSHA-approved state job safety and health plan. Employees of the U.S. Postal Service also are covered.

The Act defines an employer as any “person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State.” Therefore, the Act applies to employers and employees in such varied fields as manufacturing, construction, longshoring, agriculture, law and medicine, charity and disaster relief, organized labor, and private education. The Act establishes a separate program for federal government employees and extends coverage to state and local government employees only through the states with OSHA-approved plans.

The Act does not cover:

- Self-employed persons;
- Farms which employ only immediate members of the farmer’s family;
- Working conditions for which other federal agencies, operating under the authority of other federal laws, regulate worker safety. This category includes most working conditions in mining, nuclear energy and nuclear weapons manufacture, and many aspects of the transportation industries; and
- Employees of state and local governments, unless they are in one of the states operating an OSHA-approved state plan.

Basic Provisions/Requirements

The Act assigns OSHA two regulatory functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods, or processes reasonably necessary and appropriate to protect workers on the job. Employers must become familiar with the standards applicable to their establishments and eliminate hazards.

The Employment Law Guide is offered as a public resource. It does not create new legal obligations and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at www.dol.gov/compliance or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365).

Compliance with standards may include ensuring that employees have been provided with, have been effectively trained on, and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that apply to their own actions and conduct.

Even in areas where OSHA has not set forth a standard addressing a specific hazard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause [Section 5(a)(1)] states that each employer "shall furnish. . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."


The Act encourages states to develop and operate their own job safety and health programs. OSHA approves and monitors these "state plans," which operate under the authority of state law. There are currently 22 states and jurisdictions operating complete state plans (covering both the private sector and state and local government employees) and four (Connecticut, New Jersey, New York, and the Virgin Islands) that cover state and local government employees only. States with OSHA-approved job safety and health plans must set standards that are at least as effective as the equivalent federal standard. Most, but not all of the state plan states, adopt standards identical to the federal ones.

Federal OSHA Standards. Standards are grouped into four major categories: general industry (29 CFR 1910); construction (29 CFR 1926); maritime (shipyards, marine terminals, longshoring—29 CFR 1915–19); and agriculture (29 CFR 1928). While some standards are specific to just one category, others apply across industries. Among the standards with similar requirements for all sectors of industry are those that address access to medical and exposure records, personal protective equipment, and hazard communication.

- **Access to Medical and Exposure Records:** This regulation provides a right of access to employees, their designated representatives, and OSHA to relevant medical records, including records related to that employee's exposure to toxic substances.
- **Personal Protective Equipment:** This standard, which is defined separately for each segment of industry except agriculture, requires employers to provide employees with personal equipment designed to protect them against certain hazards and to ensure that employees have been effectively trained on the use of the equipment. This equipment can range from protective helmets to prevent head injuries in construction and cargo handling work, to eye protection, hearing protection, hard-toed shoes, special goggles for welders, and gauntlets for iron workers.
- **Hazard Communication:** This standard requires manufacturers and importers of hazardous materials to conduct hazard evaluations of the products they manufacture or import. If a product is found to be hazardous under the terms of the standard, the manufacturer or importer must so indicate on containers of the material, and the first shipment of the material to a new customer must include a material safety data sheet (MSDS). Employers must use these MSDSs to train their employees to recognize and avoid the hazards presented by the materials.

OSHA regulations cover such items as recordkeeping, reporting, and posting.

- **Recordkeeping:** Every employer covered by OSHA who has more than 10 employees, except for employers in certain low-hazard industries in the retail, finance, insurance, real estate, and service sectors, must maintain three types of OSHA specified records of job-related injuries and illnesses.



The OSHA Form 300 is an injury/illness log, with a separate line entry for each recordable injury or illness. Such events include work-related deaths, injuries, and illnesses other than minor injuries that require only first aid treatment and that do not involve medical treatment, loss of consciousness, restriction of work, or transfer to another job. Each year, the employer must conspicuously post in the workplace a Form 300A, which includes a summary of the previous year's work-related injuries and illnesses. The Form 300A must be posted by February 1 and kept in place until at least April 30.

OSHA Form 301 is an individual incident report that provides added detail about each specific recordable injury or illness. An alternative form, such as an insurance or workers' compensation form that provides the same details may be substituted for OSHA Form 301.


Employers with 10 or fewer employees and employers in statistically low-hazard industries (listed in 29 CFR 1904, Subpart B) are exempt from maintaining these records. Industries currently designated as low-hazard include: automobile dealers; apparel and accessory stores; eating and drinking places; most finance, insurance, and real estate industries; and certain service industries, such as personal and business services, medical and dental offices, and legal, educational, and membership organizations.

However, such employers must keep these records if they receive an annual illness and injury survey form either from the Bureau of Labor Statistics (BLS) or from OSHA. Employers selected for these surveys, even those usually exempt from illness and injury recording requirements, will be notified before the end of the prior year to begin keeping records during the year covered by the survey.

- **Reporting:** Each employer, regardless of industry category or the number of its employees, must advise the nearest OSHA office of any accident that results in one or more fatalities or the hospitalization of three or more employees. The employer must so notify OSHA within eight hours of the occurrence of the accident. OSHA often investigates such accidents to determine whether violations of standards contributed to the event.

Cooperative Programs: OSHA offers a number of opportunities for employers, employees, and organizations to work cooperatively with the Agency. OSHA's major cooperative programs are the Voluntary Protections Program (VPP), the Safety and Health Achievement Recognition Program (SHARP), the Alliance Program, and the OSHA Strategic Partnership Program (OSPP). For further information on OSHA's cooperative programs, visit the Cooperative Programs section of OSHA's Web site (http://www.osha.gov/dcsp/compliance_assistance/index_programs.html).

- **Voluntary Protection Programs.** The Voluntary Protection Programs (VPP) are an OSHA initiative aimed at extending worker protection beyond the minimum required by OSHA standards. The VPP is designed to:
 - Recognize the outstanding achievements of those who have successfully incorporated comprehensive safety and health programs into their total management systems;
 - Motivate others to achieve excellent safety and health results in the same outstanding way; and
 - Establish a relationship between employers, employees, and OSHA that is based on cooperation rather than coercion.



An employer may apply for VPP at the nearest OSHA regional office. OSHA reviews an employer's VPP application and visits the worksite to verify that the safety and health program described is in effect at the site. All participants must send their injury information annually to their OSHA regional offices. Sites participating in the VPP are not scheduled for programmed inspections. However, OSHA handles any employee complaints, serious accidents, or significant chemical releases according to routine procedures.

The VPP is available in states under federal jurisdiction. Some states operating OSHA-approved state plans have similar programs. Interested companies in these states should contact the appropriate state agency for more information.

- **Safety and Health Achievement Recognition Program (SHARP).** This program recognizes small employers who operate an exemplary safety and health management system. Employers who are accepted into SHARP are recognized as models for worksite safety and health. Upon receiving SHARP recognition, the worksite will be exempt from programmed inspections during the period that the SHARP certification is valid. To participate in SHARP, an employer must contact its state's Consultation Program and request a free consultation visit that involves a complete hazard identification survey.
- **Alliance Program.** This program enables trade or professional organizations, businesses, labor organizations, and educational institutions that share an interest in workplace safety and health to collaborate with OSHA to prevent injuries and illnesses in the workplace. OSHA and the organization sign a formal agreement with goals that address training and education, outreach and communication, and promoting the national dialogue on workplace safety and health.
- **Strategic Partnership Program.** In this program, OSHA enters into an extended, voluntary, cooperative relationship with employers, associations, unions, and councils, and sometimes, entire industries. Partner worksites may be very large, but most often they are small businesses averaging 50 or fewer employees. Strategic Partnerships are designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high level of worker safety and health. All Partnerships emphasize sustained efforts and continuing results beyond the typical three-year duration of the agreement.

Employee Rights

The Act grants employees several important rights. Among them are the right to complain to OSHA about safety and health conditions in their workplaces and, to the extent permitted by law, have their identities kept confidential from employers, contest the amount of time OSHA allows for correcting violations of standards, and participate in OSHA workplace inspections.

Private sector employees who exercise their rights under OSHA can be protected against employer reprisal, as described in Section 11(c) of the OSH Act. Employees must notify OSHA within 30 days of the time they learned of the alleged discriminatory action. OSHA will then investigate, and if it agrees that discrimination has occurred, OSHA will ask the employer to restore any lost benefits to the affected employee. If necessary, OSHA can initiate legal action against the employer. In such cases, the worker pays no legal fees.

The OSHA-approved state plans have parallel employee rights provisions, including protections against employer reprisal.



Compliance Assistance Available

- **Standards:** The *Federal Register* is an excellent source of information on standards, since all OSHA standards are published there when made final, as are all amendments, corrections, insertions and deletions. OSHA also provides copies of its *Federal Register* notices on its Web site (www.osha.gov).

OSHA's regulations and standards are collected in several volumes in Title 29 CFR, Parts 1900–1999, and are available on OSHA's Web page on standards (www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=0&p_keyvalue=). To help the public understand and apply its standards and regulations, OSHA provides a number of print and Web-based tools, including fact sheets, booklets, Expert Advisors, eTools, and Safety and Health Topics pages. OSHA has a compliance assistance section on its Web site (www.osha.gov/dcsp/compliance_assistance/index.html) that provides links to these materials.

Because states with OSHA-approved job safety and health programs adopt and enforce their own standards under state law, copies of these standards can be obtained from the individual states. Many are available through state Web sites, which are linked from OSHA's Web site (www.osha.gov).

- **Training and Education:** OSHA has more than 70 full-service field offices that offer a variety of informational services, such as publications, technical advice, audio-visual aids on workplace hazards, and lecturers for speaking engagements.

Each of these field offices has an OSHA Compliance Assistance Specialist (CAS). CASs provide general information about OSHA standards and compliance assistance resources, and are available for seminars, workshops, and speaking events. CASs promote OSHA's cooperative programs and also encourage employers to take advantage of OSHA's training resources and the tools available on the OSHA Web site (www.osha.gov).

The OSHA Training Institute in Arlington Heights, Illinois, provides basic and advanced training and education in safety and health for federal and state compliance safety and health officers; state consultants; other federal agency personnel; and private sector employers, employees, and their representatives. Course topics include electrical hazards, machine guarding, ventilation, and ergonomics, among others.

The Institute's facility includes classrooms, laboratories, a library, and an audio-visual unit. The laboratories contain various demonstrations and equipment, such as power presses, woodworking, and welding shops, a complete industrial ventilation unit, and a noise demonstration laboratory. Sixty-one courses are available for students from the private sector addressing subjects such as safety and health in the construction industry and methods of voluntary compliance with OSHA standards.

The OSHA Training Institute has partnered with other training and education institutes to conduct Training Institute courses. These Education Centers, which are located throughout the country, provide additional opportunities for the public to receive training on safety and health topics.

Under its Susan Harwood grant program, OSHA also provides funds to nonprofit organizations to develop training and education materials and to provide training to employers and employees.

Organizations awarded grants use the funds to develop training and educational programs, reach out to workers and employers for whom their programs are

appropriate, and distribute the programs to employers and employees. The Training Institute is OSHA's point of contact for learning about the many valuable training products and materials developed under such grants.

While OSHA does not distribute grant materials directly, it provides addresses and telephone numbers of persons from whom the public can order such materials. However, OSHA does provide limited lending of grant-produced audio-visual training programs through the Resource Center Audiovisual Circulation Project. Contact the OSHA Training Institute at 847-297-4810 or visit the Training Page on OSHA's Web site (www.osha.gov).

- **Consultation Services:** Consultation assistance is available to employers who want help in establishing and maintaining safe and healthful workplaces. Largely funded by OSHA, the service is available in every state and territory. It is provided at no cost to the employer. Primarily targeted toward smaller employers with more hazardous operations, the consultation service is delivered by state government agencies or universities employing professional safety consultants and health consultants. On-site OSHA consultation assistance includes an opening conference with the employer to explain the ground rules for consultation, a walk through the workplace to identify specific hazards and to examine those aspects of the employer's safety and health program that relate to the scope of the visit, and a closing conference. Later, the consultant sends a report of findings and recommendations to the employer. Unlike OSHA's enforcement program, there are no citations or penalties issued.

This process begins with the employer's request for consultation, which must include a commitment to correct any serious job safety and health hazards identified. The consultant will not report possible violations of OSHA standards to OSHA enforcement staff unless the employer fails or refuses to eliminate or control worker exposure to any identified serious hazard or imminent danger. Should this occur, OSHA may investigate and begin enforcement action. The employer must also agree to allow the consultant to confer freely with employees during the on-site visit.

Additional information about consultation assistance, including a directory of OSHA-funded consultation projects, can be found on OSHA's Web site (www.osha.gov).

- **Information Sources:** Information about state plans, VPPs, consultation programs, and inspections can be obtained from the nearest OSHA regional or area office. Area offices are listed in local telephone directories under the U.S. Department of Labor. Contact information for regional and area offices, as well as state plans and consultation programs can be found on the OSHA Web site (www.osha.gov).

OSHA also has a toll-free number: 1-800-321-OSHA (6742). This number is available 24 hours a day. Spanish-speaking operators are available. The public may also submit questions to OSHA via e-mail or regular mail. Visit the OSHA Contact Us page (www.osha.gov/html/Feed_Back.html) for the various ways to contact the agency.

The OSHA Home Page (www.osha.gov) contains information on other OSHA activities, statistics, media releases, and compliance assistance, as well as links to other safety and health Web sites. OSHA has a number of interactive advisors to help employers comply with OSHA standards.

A variety of information is available on OSHA's Publications Web site (www.osha.gov/pls/publications/pubindex.list), including online publication order forms, the

OSHA poster, guidance on OSHA recordkeeping, and online access to several OSHA publications in PDF format. Publications can also be ordered from the OSHA Publications Office at (202) 693–1888.

OSHA's Office of Small Business Assistance administers OSHA's On-Site Consultation Program and serves as liaison and point of contact with the Agency for small businesses. OSHA offers many services designed to help small businesses and welcomes comments and suggestions from small business owners and their employees.

Questions about OSHA programs, the status of ongoing standards-setting activities, and general inquiries about OSHA may be addressed to the U.S. Department of Labor, OSHA Office of Communications, 200 Constitution Avenue NW, Room N-3637, Washington, D.C. 20210; telephone 202–693–1999.

Penalties/Sanctions


Every establishment covered by the Act is subject to inspection by OSHA compliance safety and health officers (CSHOs). These individuals, who are chosen for their knowledge and experience in occupational safety and health, are thoroughly trained in OSHA standards and in the recognition of occupational safety and health hazards. In states with their own OSHA-approved state plan, pursuant to state law, state officials conduct inspections, issue citations for violations and propose penalties in a manner that is at least as effective as the federal program.

OSHA conducts two general types of inspections, programmed and unprogrammed. Establishments with high injury rates receive programmed inspections, while unprogrammed inspections are used in response to fatalities, catastrophes, and complaints (which are further addressed by OSHA's complaint policies and procedures). Various OSHA publications and documents detail OSHA's policies and procedures for inspections.

Types of violations that may be cited and the penalties that may be proposed:

The OSH Act authorizes OSHA to treat certain violations, which have no direct or immediate relationship to safety and health, as *de minimus*, requiring no penalty or abatement. OSHA does not issue citations for *de minimus* violations.

- **Other-Than-Serious Violation:** A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to \$7,000 for each violation is discretionary.
- **Serious Violation:** A violation where a substantial probability that death or serious physical harm could result and where the employer knew, or should have known, of the hazard. A penalty of up to \$7,000 for each violation must be proposed.
- **Willful Violation:** A violation that the employer intentionally and knowingly commits. The employer either knows that what he or she is doing constitutes a violation, or is aware that a condition creates a hazard and has made no reasonable effort to eliminate it. The Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than \$70,000 but not less than \$5,000 for each violation. Proposed penalties for other-than-serious and serious violations may be adjusted downward depending on the employer's good faith (demonstrated efforts to comply with the Act through the implementation of an effective health and safety program), history of violations, and size of business. Proposed penalties for willful violations may be adjusted downward depending on the size of the business. Usually no credit is given for good faith.



If an employer is convicted of a willful violation of a standard that has resulted in the death of an employee, the offense is punishable by a court-imposed fine or by imprisonment for up to six months, or both. A fine of up to \$250,000 for an individual, or \$500,000 for an organization [authorized under the Omnibus Crime Control Act of 1984 (1984 OCCA), not the OSH Act], may be imposed for a criminal conviction.

- **Repeated Violation:** A violation of any standard, regulation, rule, or order where, upon reinspection, a substantially similar violation is found. Repeated violations can bring fines of up to \$70,000 for each such violation. To serve as the basis for a repeat citation, the original citation must be final; a citation under contest may not serve as the basis for a subsequent repeat citation.
- **Failure to Correct Prior Violation:** Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day the violation continues beyond the prescribed abatement date.

Citation and penalty procedures may differ somewhat in states with their own OSH programs.

Appeals process:

- **Appeals by Employees:** If a complaint from an employee prompted the inspection, the employee or authorized employee representative may request an informal review of any decision not to issue a citation.

Employees may not contest citations, amendments to citations, penalties, or lack of penalties. They may contest the time allowed in the citation for abatement of a hazardous condition. They also may contest an employer's Petition for Modification of Abatement (PMA), which requests an extension of the abatement period. Employees who wish to contest the PMA must do so within 10 working days of its posting or within 10 working days after an authorized employee representative has received a copy.

Within 15 working days of the employer's receipt of the citation, the employee may submit a written objection to OSHA regarding the abatement date. The OSHA area director forwards the objection to the Occupational Safety and Health Review Commission, which operates independently of OSHA.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty, or the employer's notice of intention to contest.

- **Appeals by Employers:** When issued a citation or notice of a proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. Employee representatives may be invited to attend the meeting. To avoid prolonged legal disputes, the area director is authorized to enter into settlement agreements that may revise citations and penalties.
- **Notice of Contest:** If the employer decides to contest the citation, the time set for abatement, or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received in which to notify the OSHA area director in writing. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

There is no specific format for the Notice of Contest. However, it must clearly identify the employer's basis for contesting the citation, notice of proposed penalty,

abatement period, or notification of failure to correct violations. To better identify the scope of the contest, it also should identify the inspection number and citation number(s) being contested.

A copy of the Notice of Contest must be given to the employees' authorized representative. If any affected employees are unrepresented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace, or else served personally upon each unrepresented employee.

- **Appeal Review Procedure:** If the written Notice of Contest has been filed within 15 working days, the OSHA area director forwards the case to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an Administrative Law Judge (ALJ).

The ALJ may disallow the contest if it is found to be legally invalid, or a hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not require that they be represented by attorneys.

Once the ALJ has ruled, any party to the case may request a further review by OSHRC. Also, any of the three OSHRC commissioners may individually move to bring a case before the Commission for review. Commission rulings may be appealed to the U.S. Courts of Appeals.

- **Appeals In State-Plan States:** States with their own occupational safety and health programs have their own systems for review and appeal of citations, penalties, and abatement periods. The procedures are generally similar to federal OSHA's, but a state review board or equivalent authority hears cases.

Relation to State, Local, and Other Federal Laws

The OSH Act covers all private sector working conditions that are not addressed by safety and health regulations of another federal agency under other legislation. OSHA also has the authority to monitor the safety and health of federal employees. The OSHA-approved state-plan states extend their coverage to state and local government employees.

Finally, OSHA is also responsible for administering a number of whistleblower laws relating to safety and health as described in the Whistleblower Protection section of this Guide.